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APR 22 1930

CHARLES ELMORE CROPLEY
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

THE CHESAPEAKE AND OHIO RAILWAY COMPANY, *Appellant*

vs.

UNITED STATES OF AMERICA, GUYANDOT AND TUG RIVER RAILROAD COMPANY, and NORFOLK AND WESTERN RAILWAY COMPANY, *Defendant-Appellees*, and INTERSTATE COMMERCE COMMISSION, *Intervening Defendant-Appellee.*

No. 73

JURISDICTIONAL BASIS ON WHICH REVIEW ON APPEAL IS INVOKED.

HERBERT FITZPATRICK,
ROBT. B. TUNSTALL,
THOMAS L. PRESTON,
Attorneys for Appellant.

Dated April 14, 1930.

LEWIS PRINTING CO., INC., RICHMOND, VA.

IN THE

SUPREME COURT OF THE UNITED STATES

THE CHESAPEAKE AND OHIO RAILWAY COMPANY, *Appellant*

vs.

UNITED STATES OF AMERICA, GUYANDOT AND TUG RIVER RAILROAD COMPANY, and NORFOLK AND WESTERN RAILWAY COMPANY, *Defendant-Appellees*, and INTERSTATE COMMERCE COMMISSION, *Intervening Defendant-Appellee.*

No. 796

JURISDICTIONAL BASIS ON WHICH REVIEW ON APPEAL IS INVOKED.

Comes now the appellant in the above-entitled cause and makes its statement particularly disclosing the basis on which this Court has jurisdiction to review on appeal the decree below.

(a) The statutory provision which sustains the jurisdiction is the Urgent Deficiencies Appropriations Act, approved October 22, 1913, c. 32, 38 Stat. L. 220, Code of Laws of the United States, Title 28, Section 47.

(b) The decree sought to be reviewed was made and entered December 14, 1929, and appellant presented its

application for the appeal by filing its Petition for Appeal with the court below on that date (R. 126, 127).

(c) This suit was brought pursuant to the provisions of the said Urgent Deficiencies Appropriations Act, c. 32, 38 Stat. L. 219, 220, Code of Laws of the United States, Title 28, Sections 41 (28), 42-48, inclusive, for a preliminary or interlocutory, and a final or perpetual, injunction enjoining, setting aside, annulling, suspending, and restraining the enforcement, operation, and execution of so much of a certain certificate and order of the Interstate Commerce Commission (hereinafter generally referred to as the "Commission"), issued and entered on July 23, 1928, in Finance Docket No. 5161 (R. 281-2), which was heard and disposed of together with Finance Docket No. 6067 and Finance Docket No. 4818, and so much of certain other orders subsequently entered in said proceedings (R. 283-5) and especially an order entered therein on November 1, 1928 (R. 285-6), as authorized the Guyandot and Tug River Railroad Company (hereinafter generally called the "Guyandot") to construct and operate a line of railroad from Wharncliffe, West Virginia, to Gilbert, West Virginia; and enjoining and restraining the Guyandot and the Norfolk and Western Railway Company (which owns the entire capital stock of the Guyandot except directors' qualifying shares, and is generally hereinafter called the "Norfolk"), and each of them, from constructing and operating the said line of railroad from Wharncliffe, West Virginia, to Gilbert, West Virginia, under or in pursuance of the authority or pretended authority of the orders aforesaid (R. 4).

The Guyandot is a corporation organized and existing under the laws of the State of West Virginia, and a citizen of that State and a resident of the Southern District

thereof (R. 3, 91, 97, 100). The Norfolk is a corporation organized and existing under the laws of the State of Virginia, and a citizen of that State, and a resident of the Western District thereof (R. 3, 91, 97, 100). The orders complained of relate to transportation and were entered upon the petition of the Guyandot and the Norfolk (R. 4, 91, 97, 100).

This suit was therefore properly brought in the District Court of the United States for the Southern District of West Virginia, pursuant to the provisions of the aforesaid Urgent Deficiencies Appropriations Act, c. 32, 38 Stat. L. 219, Code of Laws of the United States, Title 28, Sections 41 (28), 43, that "the district courts shall have original jurisdiction * * * of cases brought to enjoin, set aside, annul, or suspend in whole or in part any order of the Interstate Commerce Commission," and that "the venue of any suit brought to enforce, suspend, or set aside, in whole or in part, any order of the Interstate Commerce Commission shall be in the judicial district wherein is the residence of the party or any of the parties upon whose petition the order was made," with certain exceptions not applicable here.

The jurisdiction of the said district court was invoked by the filing in the office of its clerk of a written petition setting forth the facts constituting the petitioner's cause of action and specifying the relief sought (R. 2-22); the petition was duly served upon every defendant therein named; the Interstate Commerce Commission intervened as a defendant in the cause (R. 90), and answers were duly filed pursuant to said Urgent Deficiencies Appropriations Act, c. 32, 38 Stat. L. 219, Code of Laws of the United States, Title 28, Section 45 (R. 91, 97, 100): whereupon, by agreement of the parties, the cause was,

on January 3, 1929, submitted to the court for decision as on final hearing (R. 105, 108).

Pursuant to said Urgent Deficiencies Appropriations Act, c. 32, 38 Stat. L. 220, Code of Laws of the United States, Title 28, Section 47, the application was heard and determined by three judges, one of whom was a circuit judge, all of whom concurred in a final decree made and entered, as aforesaid, on December 14, 1929, denying the relief prayed by the plaintiff and dismissing the petition (R. 109, 126).

This appeal is taken pursuant to the following provisions of the enactment last above and in paragraph (a) hereof referred to:

> "An appeal may be taken direct to the Supreme Court of the United States from the order granting or denying, after notice and hearing, an interlocutory injunction, in such case if such appeal be taken within thirty days after the order, in respect to which complaint is made, is granted or refused; *and upon the final hearing of any suit brought to suspend or set aside, in whole or in part, any order of said commission the same requirement as to judges and the same procedure as to expedition and appeal shall apply*"

which said provisions, by reason of the nature of the case and of the ruling below, directly apply to this case and confer upon this Court jurisdiction to review on appeal the decree below.

(d) The following cases sustain the jurisdiction:

Piedmont & N. Ry. Co. v. *United States,* 50 Sup. Ct. 192, 194, decided Feb. 24, 1930;

Colorado v. *United States,* 271 U. S. 153, 159-161;

The New England Divisions Case, 261 U. S. 184, 188-9;

Dayton-Goose Creek Ry. v. *United States,* 263 U. S. 456, 474-5;

Chicago Junction Case, 264 U. S. 258, 261-2; and

Texas v. *Eastern Texas R. R. Co.,* 258 U. S. 204, 214-16.

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Attorneys for Appellant.

Dated April 14, 1930.